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NO_____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1983

CALIFORNIA,

Petitioner,

v.

DAVID G. COHEN, et al.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE

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QUESTIONS PRESENTED

Whether the statutory scheme enacted by Congress to encourage state agencies to enforce child support obligation was intended to require these agencies to enforce the collection of arrears on such obligations after the children for whose benefit the order was made have become emancipated.

Whether the California Court of Appeal, by permitting a Pennsylvania judgment which assessed arrears to be subjected to the California statute of limitations as to the underlying order for periodic payments, has denied the judgment the full faith and credit to which it is entitled to under Article IV, Section 1 of the United States Constitution.

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DORIS COHEN MORRIS, etc. et al.,

Petitioners,

v.

DAVID G. COHEN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE

Petitioner, State of California, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the Court of Appeal of the State of California reversing with instructions an order awarding child support, entered on December 2, 1983. A petition for hearing in the California

Supreme Court was denied on February 1, 1984. The remittitur, which issued February 6, 1984, was recalled on March 27, 1984.

OPINION BELOW

The opinion of the Court of Appeal, Fourth Appellate District, Division One, reversing the order of child support (Morris v. Cohen (1983) 149 Cal.App.3d 507; 196 Cal.Rptr. 834) appears as Appendix A of this petition. A copy of the California Supreme Court's order denying hearing, without opinion, appears as Appendix B.

JURISDICTION

The order of the California Supreme Court was filed on February 1, 1984. This portion is filed within 90 days of that day date and therefore is timely. (U.S.C. section 2101(c)). This

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Court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

1. United States Constitution, Article IV, section 1
2. 42 U.S.C. § 601
3. 42 U.S.C. § 602(a)(26)
4. 42 U.S.C. § 651
5. 42 U.S.C. § 652, subsections (a)(1) through (a)(4)
6. 42 U.S.C. § 654(4)(B)
7. 42 U.S.C. § 654(6)(A)
8. 42 U.S.C. § 656(a)
9. 42 U.S.C. § 657
10. 45 C.F.R. § 232.11(a)
11. 45 C.F.R. § 302.33(a)
12. 45 C.F.R. § 302.51(f)

STATEMENT OF THE CASE

On October 2, 1959, following respondent's separation from Doris Cohen Morris (hereinafter "Doris") respondent

was ordered by a court in Pennsylvania to pay $50 per week support for Doris and their two dependent children. Both respondent and Doris then resided in Pensylvania. Respondent made only seven partial payments on the order. (CT 7, 170).[1/]

In 1976 Doris petitioned the Pennsylvania court to reduce arrearages due on the October 2, 1959, order to a final judgment. The court entered judgment for Doris in the amount of ($8,000.) (CT 8.)

Respondent resided in San Diego. The District Attorney of San Diego County, sought to enforce this order even though the children had reached majority. (CT 1-2.) The trial court awarded Doris $6,825.00. (CT 25.)

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1. CT designates the Clerk's Transcript on Appeal

On December 2, 1983, in a published opinion, the Court of Appeal of the State of California for the Fourth Appellate District, Divison One, reversed that order with directions to enter a judgment for respondent.

How the Federal Questions Are Presented

The California Court of Appeal requested supplemental briefing on the authority of the San Diego District Attorney's office to enforce a child support order when the children have been emancipated.

In addressing this issue in its opinion, the court interpreted the Social Security Act, and in particular, 42 U.S.C. section 601, as encompassing a congressional intent to use federal funds appropriated under the Act exclusively for the aid of dependent children. The

court held the congressional scheme did not envision the use of federal funds to aid adult children and their parents in securing long overdue support payments, and further held the district attorney acted inappropriately in enforcing the child support award.

Under the compulsion of the California Court of Appeal opinion local agencies in California may no longer enforce child support judgments in respect to arrearages when the children involved become emancipated.

The Court of Appeal also ruled the respondent should have been permitted to assert the defense of the California statute of limitations when there was an effort to enforce the Pennsylvania judgment in California. The court thus denied the Pennsylvania judgment full faith and credit, despite the requirement

of Article IV, section 1 of the United States Constitution.

Petitioner's timely petiton petition for hearing to the California Supreme Court urged the Court of Appeal's decision was erroneous.

Reasons for Granting the Writ

The California Court of Appeal has erroneously interpreted the intent of Congress in a manner which frustrates the federal child support scheme. Its interpretation provides a windfall for obligors who successfully evade their child support obligations until the children have become emancipated. By withdrawing the enforcement of local agencies in such age instances, the holding effectively renders unenforceable the support decree and encourages disobedience of child support orders. The interpretation also makes an imper-

missible distinction between those who receive welfare benefits and those who do not; a distinction which is barred by the statutory scheme.

The opinion of the Court of Appeal violates the Full Faith and Credit provision (Art. IV, § 1) of the United States Constitution because it subjects a sister state which was litigated and which assessed arrearages due on a periodic order final judgment to the statute of limitations of the forum state.

ARGUMENT

I

THE CALIFORNIA COURT OF APPEAL HAS ERRONEOUSLY INTERPRETED A FEDERAL STATUTE, AND, AS A RESULT, HAS FRUSTRATED THE INTENT OF CONGRESS WHICH WAS EXPRESSED IN THE PASSAGE OF A COMPREHENSIVE CHILD SUPPORT ENFORCEMENT SCHEME

Congress enacted Public Law 93-647 to establish a comprehensive child

support enforcement scheme which would encourage state and local agencies to vigorously enforce child support orders. The California Court of Appeal has erroneously interpreted this statute and its interpretation is contrary to the intent of Congress and the overall purpose of the statutory scheme,

Although there are no cases which directly contradict the holding of the Court of Appeal, its holding is erroneous when viewed in the light of the intent of Congress.

A. Statutory History

The weakening of the family unit had had profound economic as well as social consequences. The increasing "feminization of poverty" is a direct result of the growing numbers of single parent households headed by women.

A Rand Corporation study issued in 1971 (Winston and Forsher, "Nonsupport of Legitmate Children by Affluent Fathers as a Cause of Poverty and Welfare Dependence) showed that while the proportion of families in poverty declined from 20 percent to 10 percent in the period 1959 to 1968, and the rate for male headed families fell to 7 percent, poverty among female headed families increased to 32 percent and, in 1970, reached 36 percent. Indeed, 18 percent of college-educated female heads of families were poor, as opposed to 3 percent for males.

It was to ameliorate this problem that Congress added Part D to Subchapter IV of the Social Security Act by Public Law 93-647.

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1. Welfare Before IV-D: The Aid to Families with Dependent Children (AFDC) Program

The Aid to Families with Dependent Children (AFDC) program began in the 1930's with the passage of what is now Part A of subchapter IV of the Social Security Act. (IV-A.) The AFDC program offered welfare payments to families in which the father was dead, absent from the home, disabled, or in the option of the states, unemployed. Section 601 of Title 42 (all statutory references are to Title 42 of the United States Code) proclaimed the intention of the AFDC program.

> ". . . encouraging the care of dependent children in their own homes . . . by enabling each State to furnish financial assistance . . . to needy dependent children and the

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parents . . . with whom they are living to help maintain and strengthen family life. . . ."

The section authorized the appropriation for a sum each fiscal year sufficient to carry out the purposes of the AFDC program

The AFDC program resulted in some disturbing trends. When it began, the death of the father was the major basis for eligibility, but this declined with enactment of survivor benefits under the social security program, from 42 percent in 1940, to 4 percent in 1973. Disability also diminished as the basis of claims from 18.1 percent in 1961, to 10.2 percent in 1973.

The most substantial growth occurred in cases where the father was absent from the home: from 66.7 percent in 1961 to 80.2 percent in 1973. In real numbers, 2.4 million persons were

receiving AFDC benefits in 1961 because the father was absent from the home, and almost 8.7 million persons were receiving AFDC benefits in June of 1974 for that reason.

The Rand study, as well as the Senate Finance Committee (Senate Report No. 93-1356) attributed the problem to lax enforcement of child support orders. Both emphasized the number of well-off professionals such as physicians and attorneys, whose families ultimately were forced into welfare because of insufficient mechanisms for enforcement of the support obligations. (1974 U.S. Code and Administrative News 8133, 8147.)

2. Enforcement: The IV-D Amendments to the Social Security Act

The Congressional response to the crises in the growth of welfare and

inadequate child support enforcment was the passage of Public Law 93-647. This law added Part D to Subchapter IV of the Social Security Act. In stating the purpose of the amendment, the Senate Finance Committee stated:

> "The Committee believes that all children have the right to receive support from their fathers. The Committee bill . . . is designed to help children attain this right . . . . The immediate result will be a lower welfare cost to the taxpayer, but more importantly, as an effective support system is established fathers will be deterred from deserting their families to welfare . . . ." (U.S. Code Congressional and Administrative News 8133, 8146, emphasis added.)

The first section of Part D, section 651, authorized an annual appropriation to be used for enforcing the support obligations owed by absent part parents to their children. Section 652 required the Secretary of Health,

Education and Welfare (now Health and Human Services) to establish within the Department an organizational unit to, inter alia, establish standards for state programs for obtaining child support, to establish minimum organization and staffing requirements for state units engaged in such activity, to review and approve the state plans and to evaluate the implementation of state plans. (Section 642, subsections (a)(1) through (a)(4).) The Act provides for federal reimbursements to states for expenditures made for child support enforcment (§ 655) and incentive payments to states and localities (§ 658).

While the focus of IV-D was collection of child support in welfare cases, the subchapter also provides that its remedies would be made available in non-welfare cases. As the Senate

Finance Committee Report stated:

> "The Committee recognizes, however, that the problem of nonsupport is broader than the AFDC rolls and that many families might be able to avoid the necessity of applying for welfare in the first place if they had adequate assistance in obtaining the support due from absent parents. Accordingly, the Committee bill would require that the procedures adopted for . . . collecting child support be made available to families even if they are not on the welfare rolls." (1974 U.S. Code Congressional and Administrative News 8133, 8158.)

Consequently, state plans must provide that support collection services are made available to persons not receiving AFDC benefits. (Section 654, subsection (6)(A).) The implementing regulations also make such a provision. (45 C.F.R. 302.33(a).)

The intent of Congress was to make enforcement of the child support obligation by local entities the

deterrent to parents abandoning their children to the AFDC program. The spectre of a prosecuting agency taking legal action was viewed as an incentive to pay child support.

The deterrent is less effective when it comes with an escape clause. Thus, Congress could not have intended to reward parents who have successfully avoided paying child support until their children were emancipated with the windfall of impeding governmental enforcement of the accrued arrears. Indeed, that was not the case until Morris v. Cohen.

B. The Interpretation of the Court of Appeal: Morris v. Cohen.

Under the mandate of subchapter IV-D, the San Diego District Attorney's office undertook to enforce the child support order entered in favor of Doris

by the Pennsylvania court. As the children were of legal age at the time of that order, the order was for arrears only and did not provide for ongoing support.

In interpreting subchapter IV (denominating it as Title IV), the Court of Appeal looked at section 601 for an expression of intent and found:

> "'[E]ncouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such state, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection . . . .' (42 U.S.C. § 601; italics added.)" (149 Cal.App.3d at p. 511, emphasis in original.)

From this the Court concluded:

> "The congressional scheme does not envision the use of federal funds to aid adult children and their parents in securing long overdue support payments. What is envisioned is 'protection of dependent children through the provision of assistance payments [and child support collection services] to meet their current needs.'" (Id., emphasis in original.)

The court's initial error was to interpret the IV-D program from the language of section 601. Section 601 is not part of IV-D (which is concerned with enforcement), but rather part of IV-A, which relates to AFDC funds. Clearly AFDC funds are meant to aid dependent children, not adult children, and section 601 provides an appropriation of "a sum sufficient to carry out the purposes of this part" (i.e., part A, AFDC benefits, emphasis added). It says nothing

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about the purpose of, or an appropriation for, the IV-D program.

C. The Holding of Morris v. Cohen, by Providing an Incentive to Flout Child Support Orders, Violates the Intent of Congress

Ihe intent of Congress in enacting the IV-D program was to provide a deterrent to parents who might not otherwise pay child support. The deterrent was in the form of the "stick" of enforcement of child support orders by local agencies. Morris v. Cohen instead provides a windfall, a "carrot," by rewarding those who succeed in not paying child support until their children are of legal age. The facts of the instant case are illustrative of this principle. It is not cost effective for a Pennsylvania plaintiff to retain California counsel to pursue a judgment of less than $7,000. Only the ready

availability of a local prosecuting agency makes enforcement meaningful. The removal of such enforcement, as is mandated by the holding in this case, causes enforcement to disappear upon the child's eighteenth birthday, regardless of how obstreperous the parent has been in not paying child support.

By rewarding the failure to pay support, the effect can be to encourage parents not to pay their child support obligation, and as a result, increase the numbers of persons who are required to receive AFDC benefits.

The numbers involved are not insignificant. In the fiscal year 1982-1983, prosecuting agencies in California alone processed 807,593 non-AFDC cases involving custodial parents residing in California, and an unknown number of non-AFDC cases among

the 164,749 cases involving requests from other states to enforce child support orders against non-custodial parents residing in California. (Child Support Managment Information System Annual Report, Fiscal Year 1982/1983, Table XVIII.) If a significant number of these cases became uncollectible because unwilling parents were stiffened in their resolve not to pay because of the knowledge enforcement of the order against them would be terminated with the passage of time, there would be a substantial increase in AFDC paid. While the ultimate result would be collection of AFDC arrears against these parents despite emancipation (see Argument I D) infra, the immediate consequence would be counterproductive to the reduction of AFDC expenditures.

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Consequently, the Court of Appeal's holding flies squarely in the face of the intent to Congress to minimize AFDC expenditures by deterring non-custodial parents from flouting support orders.

D. The Holding in Morris v. Cohen Requires Discrimination Based on the Receipt of AFDC Which Violates the IV-D Program

Although the focus of the IV-D program is collection of child support in welfare cases, the program also requires the same enforcement support be provided in non-AFDC situations. (Section 654, subsection (6)(a).)

However, the interpretation placed upon the program in Morris v. Cohen is violative of this principal.

In cases involving AFDC expenditures, the IV-D program seeks enforcement by the state acting as the

assignee of child support orders. Consequently, section 602, subsection (a)(26) requires as a condition of eligibility for AFDC, each applicant or recipient "assign the State any rights to support from any other person such applicant may have." (See also 45 C.F.R. § 232.11.)

Under the IV-D program, the state plan must provide the state will undertake to secure support "in the case of any child with respect to whom such assignment [under section 602(a)(26)] is effective." (§ 654(4)(B).) This obligation is one owed to the state by the individual responsible for providing support. (§ 656(a).)

When a family ceases receiving AFDC assistance, the assignment of support rights also terminates, except with respect to the amount of any unpaid sup-

port obligation which accrued under the assignment. When such arrears exist, the IV-D agency is required to attempt to collect the unpaid obligation and use such collections to reimburse any amounts of past assistance which have not already been recouped through collection of support. (Section 657; 45 C.F.R. 302.51(f).) In substance the state is required to enforce child support orders when it is only entitled to recover arrears.

In Greene v. Iowa District Court For Polk County (1981) 312 N.W.2d 915, a decision of the Iowa Supreme Court, Anna Greene, as a condition of receiving welfare benefits, assigned her rights to support payment from the plaintiff to the Department of Social Services. Some two years later Anna executed an agreement purporting to

release plaintiff from any obligation for past due child support, went off of aid, and remarried plaintiff. The Department of Social Services sought to recover delinquencies which had accrued prior to Anna's termination from assistance.

In holding the Department was entitled to seek reimbursement for assistance it paid to Anna, the Court found the assignment was unaffected by either the purported release or Anna's remarriage. The Court analyzed the federal child support program and concluded it did not bar the state from collecting the accrued child support judgment although there was no longer any dependence upon welfare benefits. (Id., at p. 719.) There is no basis to believe a contrary conclusion would have been reached regardless of the reason for Anna's termination from welfare.

The instant case also involves the accrual of child support payments over a period of time, although no aid was applied for and there was no assignment of the right to receive the support to a state agency. Unlike Greene, where the court held the state could enforce the arrears only judgment, the court here said the agency was prevented from doing so. The distinction between the instant case and Greene is that in the latter case welfare was involved. Section 654, subsection (6)(A) provides it is impermissible for a state to draw a distinction between welfare recipients and those who did not receive welfare in its child support enforcement program.

A different division of the California Court of Appeal from that which rendered Morris v. Cohen held the state may seek to recover arrears

assigned to it as a condition of receiving welfare. In In re Marriage of Shore (1977) 71 Cal.App.3d 290; 139 Cal.Rptr. 349, the court rejected the contention the "right to support" assigned to a county when the custodial parent receives welfare terminated when the custodial parent ceased to receive AFDC. (Id., at p. 298.) Instead of finding the local agency was barred from seeking to enforce such arrears, the Court of Appeal held the local district attorney could be compelled by the remedy of administrative mandamus to seek to enforce the order.

Again, the distinction between Shore and the instant case was the receipt of AFDC benefits in Shore. If the district attorney can be compelled to obtain enforcement of an arrears only judgment in Shore, but is barred from

enforcing an arrears only judgment here because welfare is not involved, then an impermissible distinction has been created which violates section 654, subsection (6)(A).

Courts in New Jersey (Dolberry v. Dolberry (1982) 188 N.J. Super. 265; 457 A.2d 71) and Washington (Moore v. Moore (1978) 20 Wash.App.2d 909; 583 P.2d 1249) have also held child support assigned as a condition of a welfare grant may be collected after termination of assistance. Congress did not envision a distinction being drawn based on the grant of welfare assistance.

The opinion of the Court of Appeal in the instant case is contrary to the intent of Congress, and certiorari should be granted to remedy the court's erroneous holding.

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II

THE OPINION OF THE CALIFORNIA COURT OF APPEAL VIOLATES ARTICLE IV, SECTION 1 OF THE UNITED STATES CONSTITUTION BECAUSE IT DENIES FULL FAITH AND CREDIT TO THE PENNSYLVANIA JUDGMENT

The Court of Appeal reversed the judgment of the trial court in the instant case because it held respondent should have been permitted to assert the defense of the California statute of limitations against the Pennsylvania judgment. This holding violated Article IV, section 1 of the United States Constitution.

In 1976 Doris obtained a judgment for child support in Pennsylvania based on the period from 1959 to 1962 when respondent was required to and failed to pay child support. This judgment was transferred to California and entered as a judgment on September 30, 1976. Respondent's attempt to

attack the judgment as barred by the California statute of limitations failed because the trial court held the 1976 Pennsylvania order was entitled to full faith and credit under the United States Constitution. The Court of Appeal overturned this ruling holding the last support payment became due in late 1962 and Doris could not have maintained her action more than ten years from that date.

Article IV, section 1 of the United States Constitution provides:

> "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may be by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

Congress has implemented this provision by providing that judicial proceedings shall have the same full faith and credit in

every court in the United States as they have in the court of the state in which they are taken. (28 U.S.C. § 1738; Thomas v. Washington Gas Light Co. (1980) 448 U.S. 261, 270.) In Riley v. New York Trust Co. (1942) 315 U.S. 343, 348, 349, this Court said of the Full Faith and Credit Provision:

> "This clause of the Constitution brings to our Union a useful means for ending Litigation. Matters once decided between adverse parties in any state or territory are at rest. Were it not for this full faith and credit provision, so far as the Constitution controls the matter, adversaries could wage again their legal battles whenever they met in other jurisdictions. Each state could control its own courts but itself could not project the effect of its decisions beyond its own boundaries. Cf. Pennoyer v. Neff, 95 U.S. 714, 722. That clause compels that controversies be stilled, so that, where a state court has jurisdiction of the parties and subject matter, its judgment controls in other states to the

> same extent as it does in the state where rendered. Roche v. McDonald, 275 U.S. 449, 451 . . . . By the Constitutional provision for full faith and credit, the local doctrines of res judicata, speaking generally, become a part of national jurisprudence, ..."

Consequently, persons bound by the law of the state where the judgment was rendered must also be bound by such law in other states. (Hansberry v. Lee (1940) 311 U.S. 32.) Thus, the court in the forum state may not deny full faith and credit to a judgment of the initial state even if the initial state made an error of law, even if the error goes to the law of the forum state. (Fauntleroy v. Lum (1908) 210 U.S. 230, 243-244.) The merits of the decision in the initial state are not subject to litigation in the forum state. As this Court held in Marin v. Augedahl (1918) 247 U.S. 142, 149: "Whether the decision was right or

wrong is not open to discussion here. If wrong, it was subject to correction on proper application to the court which made it, or on appeal, but it was not void or open to collateral attack."

The Full Faith and Credit provision compels enforcement of a judgment in the forum state "even though a suit upon the original cause of action was barred there by limitations before the judgment was procured. (Magnolia Petroleum v. Hunt (1943) 320 U.S. 430, 439.) Even a revived judgment of an initial state must be honored in the forum state despite the fact that under the law of the forum state a comparable judgment could not have been revived at the time it was reinstituted in the initial state. (Roche v. McDonald (1928) 275 U.S. 449, 451.)

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In Union National Bank v. Lamb (1949) 337 U.S. 38, the petitioner obtained a Colorado judgment in 1927 and revived it there in 1945. Suit was then brought on the judgment in Missouri, which refused enforcement because the original judgment could not, under Missouri law, have been revived in 1945. This Court reversed, holding Roche v. McDonald, supra, as being dispositive as "any other result would defeat the aim of the Full Faith and Credit Clause." (Union National Bank v. Lamb, supra at p. 42.) This Court held it was the 1945 Colorado judgment which claimed full faith and credit in Missouri, and no Missouri statute of limitations was advanced as terminating a judgment of that vintage. (Id., at p. 43; see also, Watkins v. Conway (1966) 385 U.S. 188.)

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The Court of Appeal, in the instant case, has gone behind the Pennsylvania judgment, applied California statute of limitations to the order on which the judgment was based and relitigated the merits or the arrearages determination of the Pennsylvania judgment. It has treated that judgment in a manner different than it would have been treated in Pennsylvania and undermined its res judicata effect. Indeed, there could be fifty or more determinations of the effect of the judgment under the ruling of the Court of Appeal, depending upon where enforcement was sought.

This clearly contravenes the Constitution because it denies the Pennsylvania judgment the effect of res judicata. Respondent had the opportunity to assert the Pennsylvania statute of limitations when suit was instituted

in that state. He did not. He now cannot be permitted to subject the judgment to the California statute of limitation, a statute which to the suit was not governed when it was filed.

The ruling of the California Court of Appeal violates the Full Faith and Credit provision of the United States Constitution, and certiorari should be granted to review its ruling.

CONCLUSION

For the foregoing reasons petitioner respectfully submits that the writ of certiorari should issue to review the decision of the Court of Appeal of the State of California.

Respectfully submitted,

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A P P E N D I X

Appendix A

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

COMMONWEALTH ex rel. and
DORIS COHEN MORRIS, etc.,

Plaintiffs and Respondents,

v.

DAVID G. COHEN,

Defendant and Appellant.

4 Civ. No. 22012
(Super. Ct. No. 388325)

[Decided 12/2/83]

APPEAL from a judgment of the Superior Court of San Diego County, Ross G. Tharp, Judge. Reversed with directions.

Duke & Gerstel, Bryan R. Gerstel, Carlos D. Molina and Karen J. Headley for Defendant and Appellant.

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Edwin L. Miller, Jr., District Attorney, and Ralph J. Fear, Deputy District Attorney, for Plaintiffs and Respondents.

David G. Cohen (David) and Doris Cohen Morris (Doris) were Pennsylvania residents, married there in 1950. Two children were born. The parties separated in 1959, and on October 2 of that year, David was arrested in Pennsylvania and ordered to pay $50 per week for support of Doris and the children. David then posted a $1,000 bond with the court to insure his compliance with the support order and moved to California, where he has since resided. He made seven partial payments on the support order.

On September 30, 1959, Doris filed for divorce, which was finalized on

December 7, 1960. No spousal or child support order was entered at that time. On November 4, 1961, Doris married Edwin Morris, who adopted the two children on November 29, 1962.

Fourteen years passed. Then, in 1976, Doris petitioned the Pennsylvania court to reduce arrearages due on the October 2, 1959, support order to a final judgment. David did not appear at the Pennsylvania hearing. The court entered judgment for $8,000 in Doris' favor. David did not appeal or move to vacate the judgment. Represented by the San Diego County District Attorney, Family Support Division, Doris had the Pennsylvania judgment transferred to California and entered as a money judgment under Code of Civil Procedure section 1710.10 on September 30, 1976.

David moved to vacate the

California judgment under section 1710.40. His attempt to raise a number of defenses to enforcement of the judgment was rebuffed by the trial court, finding the 1976 Pennsylvania judgment was entitled to full faith and credit under the United States Constitution and David's defenses to enforcement of the judgment should have been raised and litigated before the Pennsylvania court. The trial court then contradicted itself and addressed one of David's defenses, finding Doris' right to spousal support under the 1959 order terminated upon her divorce from David. The court reduced the awared award to $6,825, based on arbitrary apportionment of the $50 per week as $25 per week for Doris and $25 per week for the children.

David's motion for a new trial was denied, as was Doris' motion for

reconsideration of the reduction of the judgment amount. David contends the trial court erred in refusing to consider his affirmative defenses to enforcement of the 1976 judgment. Doris, on cross-appeal, argues the trial court erred in ruling on the merits of the Pennsylvania judgment and reducing the judgment.

DISCUSSION

I

As a preliminary matter, the district attorney's office defends its representation of Doris and her two adult children[1] in their bid to collect a 14-year-old debt as mandated by Title IV-D (42 U.S.C., §§ 651-660), a 1975 amendment to Title IV of the Social

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1. By 1976, when Doris requested the district attorney's representation, both children had reached majority.

Security Act. That amendment, implemented through regulations (45 C.F.R., § 301.0 et seq. requires that states which participate in the Aid to Families with Dependent Children (AFDC) program provide child support collection services to all individuals, regardless of whether they are receiving public assistance, upon the individual's application for these services. (42 U.S.C. § 654(6)(A); 45 C.F.R. § 302.33(a).) California elected to continue its participation in the AFDC program and enacted statutes implementing the Title IV-D directive. (See Welf. & Inst. Code, §§ 10600 et seq. and 11200, et seq.)

Title IV of the Social Security Act, "Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services,"

explicitly states the congressional purpose in its enactment as:

> "[E]ncouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection . . . ." (42 U.S.C., § 601; italics added.)

The congressional scheme does not envision the use of federal funds to aid adult children and their parents in securing long overdue support payments. What is envisioned is "protection of dependent children through the provision of assistance payments [and child support collection services] to meet their

current needs." (Burnham v. Woods, 70 Cal.App.3d 667, 673; see also Garcia v. Swoap, 63 Cal.App.3d 903, cert. den. 436 U.S. 930 [98 S.Ct. 2829].) In electing to participate in the AFDC program, California did not, pursuant to Title IV-D, assume the obligation of collecting child support arrearages due parents and their adult children, who are not "dependent children" under Title IV. What it did assume, rather, was the obligation to provide child support collection services to families of minor children in present need of the arrearages for the children's maintenance, whether or not the families are receiving public assistance.

California did not voluntarily assume the obligation of collecting child support arrearages due parents and their adult children. The California plan for

securing past due child support (Welf. & Inst. Code, § 11475) is found in Chapter 2 of the code, "Aid to Families with Dependent Children" (Welf. & Inst. Code, § 11200 et seq.). The chapter addresses itself exclusively to the needs of the dependent children defined for purposes of the chapter as "children under the age of 18 years . . . in need [of aid or services] because they have been deprived of parental support and care . . . ." (Welf. & Inst. Code, § 11250.)

While Welfare and Institutions Code section 11475 rather ambiguously provides:

> "Each county shall maintain a single organizational unit located in the office of the district attorney which shall have responsibility for promptly and effectively enforcing child and spousal support obligations . . . . The district attorney shall take appropriate action, both civil and criminal, to enforce

> [the child support] obligation when the child and the spouse or former spouse is receiving public assistance. When the child is not receiving public assistance, the district attorney shall take appropriate action to enforce the child support obligation. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that child support enforcement services are provided to <u>all individuals</u> [italics added] whether or not they are recipients of public social services and that spousal support enforcement services are available to those receiving public social services,"

the language "to all individuals" must be constructed, in accordance with the comprehensive scheme of Chapter 2 of the Welfare and Institutions Code, to encompass individuals with <u>dependent children</u> (that is, children under the age of 18 who are in need because they lack parental support and care [see Welf. & Inst.

Code, § 11250]) for whose benefit the child support order now sought to be enforced was entered.

Counsel have not cited and we have not found authority interpreting section 11475.1 on this point. The district attorney relies on Carter v. Morrow, 526 F.Supp. 1225 (W.D. N. Car. 1981) to support his position that the district attorney's office is required, under federal law, to represent Doris. The case is inapposite. Carter held that failure of defendant state officials to provide plaintiffs, none of whom were currently receiving AFDC, with all necessary and appropriate child support enforcement services violated the provisions of Title IV-D. However, each of the Carter plaintiffs was found to be "in immediate need of child support payments

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from absent fathers in order to provide for their minor children." (Id., at p. 1226.)

What is involved here is not the enforcement of a parent's obligation to support minor children in immediate need of child support payments but the collection of a 14-year-old debt owed an ex-wife for the support of now adult children. Federal law doses not require, and California law does not authorize, the district attorney to represent Doris in this litigation. In seeking to enforce the 1976 Pennsylvania judgment on behalf of Doris and her two adult children, the district attorney's office quite inappropriately acted as a collection agency, at the taxpayer's expense.

We proceed to address the parties' contentions with regard to enforcement of the judgment in this

sta e, as we foresee the possibility of Doris retaining private counsel and again attempting to enter the 1976 judgment as a sister-state judgment in the California courts.

II

The district attorney has brought this action under the 1974 Sister State Money-Judgments Act (SSMJA). (Code Civ. Proc., §§ 1710.10-1710.65.) David argues on appeal that Doris' enforcement action in fact falls under the Revised Uniform Reciprocal Enforcement of Support Act of 1968 (RURESA), enacted in California as Code of Civil Procedure sections 1650-1699, rather than under the general act for enforcement of sister state judgments. Doris' action indeed falls under RURESA.

A judgment may be enforced as a sister state judgment if it is "part of

any judgment, decree, or order of a court of a state of the United States, other than California, which requires the payment of money, but does not include a support order as defined in subdivision (k) of Section 1653." (§ 1710.10, subd. (c); italics added.) Support orders are to be enforced under RURESA. Code of Civil Procedure section 1653, subdivision (k), part of RURESA, defines "support order" as "any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered."

Liebow v. Superior Court, 120 Cal.App.3d 573, considered the issue here presented -- whether a money judgment for support arrearages is enforceable under SSMJA or RURESA. The appellate court

held that a judgment for support arrearages, beacuse it is a final judgment for a liquidated sum of money, is not a "support order" and therefore not excluded from enforcement under SSMJA. The court construed Code of Civil Procedure section 1653, subdivision (k), to read "any judgment, decree, or order of support in favor of an obligee whether temporary or final, [and] subject to modification, revocation, or remission . . .," (Liebow, p. 578) finding that "to construe these two groups disjunctively would yield the illogical result of causing any judgment to fall within the definition because all judgments are either temporary or final." (Id., at p. 580.) Our reading of the two acts, however, leads to the conclusion that this "illogical result" is just what the RURESA drafters had in mind. The design

of the legislation is such that all support orders, whether for sums presently due or past due and unpaid, whether final or modifiable, are to be enforced under RURESA rather than under SSMJA.

We look first to the express purposes of the statute. "The purposes of this title are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto." (Code Civ. Proc., § 1652.)

"Duty of support," as used in RURESA, is defined as:

> "[A] duty of support whether imposed or imposable by law or by order, decree, or judgment of any court whether interlocutory or final or whether incidental to a proceeding for dissolution of marriage, judgment of nullity, or for legal separation, or to an action for divorce, separation, separate maintenance, or otherwise, and includes the

> duty to pay arrearages of support past due and unpaid." (Code Civ. Proc., § 1653, subd. (b); italics added.)

Additionally, Code of Civil Procedure section 1672 provides, in pertenent part: "All duties of support, including the duty to pay arrearages, are enforceable by an action under this title, including a proceeding for civil contempt." (Italics added.)

A straightforward reading of RURESA as enacted by the California Legislature makes clear that a judgment for support arrearages, despite the fact that it is a nonmodifiable final judgment for a liquidated sum of money (attributes of judgments traditionally enforced under SSMJA), is to be enforced by an action under RURESA, Code of Civil Procedure sections 1650-1699. To interpret section 1653, subdivision (k), as did the Liebow

court, as including in the definition of "support order" only those orders that are temporary or final and modifiable, contradicts the language of the preceding subsection (b), which provides, by implication, that all final judgments imposing a duty of support are within the ambit of RURESA, not simply those final judgments "subject to modification, revocation, or remission . . . ." (§ 1653, subd. (k).) And, this interpretation of the provisions at issue furthers RURESA's purpose of providing a means of enforcing all support obligations of obligors located outside the jurisdiction in which dependent spouses and children are present. (See Mehrstein v. Mehrstein, 245 Cal.App.2d 646.)

III

Code of Civil Procedure section 1699, subdivision (a), permits the

judgment debtor to raise all defenses to enforcement of a support order under RURESA that he or she would be entitled to raise to enforcement of a support order issued by a court of this state:

> "Upon registration the registered foreign support orders shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner." (Italics added.)

One of the affirmative defenses David attempted to raise in the trial court was Doris' action on the Pennsylvania judgment is barred by the California statute of limitations. This defense should have been considered by the trial court. David's failure to appear at the Pennsylvania hearing, to appeal or move to vacate the Pennsylvania

judgment, does not bar him from raising defenses to its enforcement under Code of Civil Procedure section 1699, subdivision (a). (Compare Magalnick v. Magalnick, 98 Cal.App.3d 753, 758.)

In Farmers & Merchants Trust Co. v. Madeira, 261 Cal.App.2d 503, the appellate court held the defense of the California statute of limitations, Code of Civil Procedure section 337.5, subdivision (3), could be raised in an action to enforce a sister state judgment for support, brought in California, and when a judgment provides for periodic support payments "the applicable statute of limitations runs against each installment as it falls due (DeUprey v. DeUprey, 23 Cal. 352." (Id., at p. 516.)

The applicable statute of limitations on enforcement of the instant

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judgment is 10 years. (Code Civ. Proc. § 337.5, subd. (3).) The final installment of support which Doris claims David owed under the 1959 Pennsylvania support order fell due in late 1962. Clearly, California's 10-year statute of limitations has long since run on that final installment and all prior installments due under the 1959 order.[2/]

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2. The argument that the statute was tolled under Code of Civil Procedure section 352, subdivision (a), during the children's minority and therefore has not yet run on the child support portion of the order is unavailing. Doris' purpose is securing arrearages due under the child support portion of the 1959 order is presumably to obtain reimbursement for having supported the children out of her own funds. Doris is therefore deemed the beneficiary of the arrearages and the statute of limitations period is measured only as to her. (See In re Marriage of Utigard, 126 Cal.App.3d 133; Di Corpo v. Di Corpo, 33 Cal.2d 195.)

Doris' reliance on the California Supreme Court decision of Lewis v. Lewis, 49 Cal.2d 389, for the propostion entry of the 1976 Pennsylvania judgment for support arrearages revived the 1959 order so that we must measure the statute of limitations period from 1976 is misplaced.

Lewis involved a 1947 Illinois support order which had its arrearages reduced to a judgment by the same Illinois court in 1950. In 1954 the plaintiff sought to enter both judgments in California and to recover the amount due thereon. Defendant opposed entry of the judgment and contended recovery upon the 1947 judgment, for payments due more than five years before commencement of the Lewis action in California, was barred by the five-year statute of limitations on actions on judgments,

California Code of Civil Procedure section 336, subdivision (1) (now 10 years, under Code Civ. Proc., § 337.5, subd. (3)).

The Lewis court ruled:

> "Having acquired jurisdiction of the subject matter and of the parties in the divorce action brought by defendant, the Illinois court retained jurisdiction to modify and enforce its court order. [Citations.] It therefore had jurisdiction to enter the supplemental 'judgment order' of December 11, 1950, fixing the amount of accrued arrearages . . . .
>
> "If defendant had no notice of the 1950 proceedings, the 'judgment order' of December 12, 1950, is unenforceable, and plaintiff's rights must be determined under the judgment of December 12, 1947. Recovery for payments due thereunder prior to August 26, 1949 [five yars years prior to filing of the California enforcement action], is barred by the five-year statute of limitations found prior to 1953 in subdivision 1 of section 336 of the Code of Civil Procedure. [Citation.] If defendant had

> notice of the 1950 proceedings, the 'judgment order' of December 12, 1950, is a valid judgment entitled to recognition under the full faith and credit clause of the United States Constitution, and the applicable statute found in section 337.5 of the Code of Civil Procedure as amended in 1953. (See Mudd v. McColgan, 30 Cal.2d 463, 468 . . .)" (49 Cal.2d at pp. 395-397.)

The Lewis court citation to Mudd v. McColgan (30 Cal.2d 463) makes clear its decision was bottomed on the fact California's then five-year statute of limitations had not run on the 1947 judgment at the time the Illinois court entered its 1950 judgment, extending the statute of limitations. As the Mudd court noted:

> "[A] party had no vested right in the running of a statute of limitation prior to its expiration. He [or she] is deemed to suffer no injury if, at the time of an amendment extending the period of limitation for

> recovery, he [or she] is under obligation to pay." (Mudd, at p. 468.)

Here, in contrast, when the Pennsylvania court entered its 1976 order, 14 years had elapsed since the running of the California statute of limitations on the final payment due under the 1959 order. In the Mudd court's terminology, David indeed had a vested right in the running of the statute as of 1976, and Lewis is inapposite. The County of San Diego District Attorney, Family Support Division, lacks standing to enforce the 1976 Pennsylvania judgment and the claim is precluded the by the California statute of limitations.

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David is entitled to relief from enforcement.[3/]

DISPOSITION

The judgment is reversed with instructions to the trial court to enter judgment for David.

CERTIFIED FOR PUBLICATION

/s/
STANIFORTH, J.

WE CONCUR:

/s/
COLOGNE, ACTING P.J.

/s/
WIENER, J.

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3. In light of the success of the statute of limitations defense, we decline to pass on David's additional defenses of lack of notice, lack of personal jurisdiction, satisfaction of the judgment and excessive judgment amount, or on Doris' claims of error regarding the trial court's reduction of the judgment amount.

Appendix B

ORDER DENYING HEARING

After Judgment By the Court of Appeal

4th District, Division 1, Civil No. 22012

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN BANK

COMMONWEALTH ex rel. et al.

v.

COHEN

Respondents' petition for hearing DENIED.

/s/
BIRD, Chief Justice

Appendix C

UNITED STATES CONSTITUTION

ARTICLE IV. -- STATES -- RECIPROCAL RELATIONSHIP BETWEEN STATES AND WITH UNITED STATES

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

UNITED STATES CODE ANNOTATED

Title 42

Section 601

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain cabability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protec-

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tion, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

UNITED STATES CODE ANNOTATED

Title 42

Section 602.

(a) Contents

A State plan for aid and services to needy families with children must

. . . . . .

(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required --

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or

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receiving aid, and (ii) which have accrued at the time such assignment is executed,

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed; and that, if the relative with whom a child is living is found to be ineligi-

bile because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 606(b)(2) of this title (without regard to subparagraphs (A) through (E) of such section);

. . . . . .

UNITED STATES CODE ANNOTATED

TITLE 42

Section 651

For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, and obtaining child spousal support, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

UNITED STATES CODE ANNOTATED

TITLE 42

Section 652

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall --

(1) establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the absent parent's child is living as he

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determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

(3) review and approve State plans for such programs;

(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than annually, conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 603(h) of

this title whether the actual operation of such programs in each State conforms to the requirements of this part;

. . . . . .

UNITED STATES CODE ANNOTATED

TITLE 42

Section 654

A State plan for child and spousal support must --

. . . . . .

(4) provide that such State will undertake --

. . . . . .

(B) in the case of any child with respect to whom such assignment is effective, to secure support for such child from his parent (or from any other person legally liable for such support) and, at the option of the State, from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obliga-

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tion has been established with respect to such spouse), utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;

. . . . . .

(6) provide that (A) the child support collection or paternity determination services determined established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by

such individual with the State, including at the option of the State, support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse), ...

UNITED STATES CODE ANNOTATED

TITLE 42

Section 656

(a) The support rights assigned to the State under section 602(a)(26) of this title shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

. . . . . .

UNITED STATES CODE ANNOTATED

Title 42

Section 657

(a) Amount collected during fifteen month period beginning July 1, 1975

The amounts collected as child support by a State pursuant to a plan approved under this part during the 15 months beginning July 1, 1975, shall be distributed as follows:

(1) 40 per centum of the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without any decrease in the amount paid as assistance to such family during such month;

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(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government

to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

CODE OF FEDERAL REGULATIONS

Title 45

Section 232.11

(a) The State plan must provide that:

(1) As a condition of eligibility for assistance, each applicant for or recipient of AFDC shall assign to the State any rights to support from any other person as such applicant or recipient may have:

(i) In his own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance; and

(ii) Which have accrued at the time such assignment is executed.

(2) If the relative with whom a child is living fails to comply with the

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requirements of paragraph (a)(1), (2) or (3) of this section, such relative shall be denied eligibility without regard to other eligibility factors.

(3) If the relative with whom a child is living is found to be ineligible for assistance because of failure to comply with the requirements of paragraph (a)(1), (2), or (3) of this section, any aid for which such child is eligible (determined without regard to the needs of the ineligible relative) will be provided in the form of protective payments as described in § 234.60 of this chapter.

(4) For new applicants, the requirements of paragraph (2) of this section shall be effective August 1, 1975; and for current recipients, it shall be effective as determined by the State agency but not later than the time of the next redetermination of eligibility

required by § 206.10(a)(9) of this chapter and in any event not later than February 1, 1976.

. . . . . .

CODE OF FEDERAL REGULATIONS

Title 45

Revised as of October 1, 1983

Section 302.33

(a) The State plan shall provide that the support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the IV-D agency.

. . . . . .

CODE OF FEDERAL REGULATIONS

Title 45

Section 302.51

The State plan shall provide as follows:

. . . . . .

(f) When a family ceases receiving assistance under the State's title IV-A plan, the assignment of support rights under § 232.11 of this title terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. From this accrued amount, the IV-D agency shall attempt to collect such unpaid obligation. Under this requirement:

(1) Such collections shall be used to reimburse any amounts of past assistance which have not been reimbursed

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under paragraph (b)(4) of this section;

(2) Of the amount collected, the IV-D agency shall determine the Federal Government's share of the collection so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payments. From the Federal Government's share the State IV-D agency or political subdivision of the State pursuant to the title IV-D State plan shall deduct and pay the incentive payment, if any, prescribed in § 303.52;

(3) Only amounts collected pursuant to this paragraph which exceed the amount of unreimbursed past assistance shall be paid to the family;

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(4) For those cases in which collections are authorized under paragraph (e) of this section, priority shall be given to collection of current support.

AFFIDAVIT OF SERVICE BY MAIL

Attorney:

JOHN K. VAN DE KAMP
Attorney General of
the State of California

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Deputy Attorney General

110 West A Street, Suite 700
San Diego, California 92101

No: _____
October Term, 1983

COMMONWEALTH, ex rel;
DORIS COHEN MORRIS etc. et al.,

Petitioners

v.

DAVID G. COHEN

Respondent

I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California 92101.

I have served the within Petition for Writ of Certiorari as follows: To Alexander L. Stevas, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and 40 copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing one copy in a separate envelope addressed for and to each addressee named as follows:

Honorable Edwin Miller
District Attorney
220 West Broadway, Suite 700
San Diego, CA 92101

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Fourth Appellate District
Division One
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San Diego, CA 92101

San Diego Superior Court
North County Branch
325 S. Melrose Dr.
Vista, CA 92083

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Hon. Ross G. Tharp, Judge

California Supreme Court
350 McAllister St. Rm. 4050
San Francisco, CA 94102

Bryan R. Gerstel
Karen J. Headley
Attorneys at Law
101 West Broadway, Suite 400
San Diego, CA 92101

Each envelope was then sealed and with the postage prepaid deposited in the United States Mail by me at San Diego, California, on the 30 day of April, 1984

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, April 30, 1984.

Clifford E. Reed

CLIFFORD E. REED, JR.

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(2)

No. 83-1803

In The
Supreme Court of the United States
October Term, 1983

CALIFORNIA,

Petitioner,

vs.

DAVID G. COHEN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE

BRYAN R. GERSTEL
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QUESTIONS PRESENTED

Whether the California District Attorney's Office has standing to represent Petitioner and the authority to enforce a Pennsylvania judgment for support arrearages on behalf of non-resident adults.

Whether the California Statute of Limitation for enforcement of support orders may bar the enforcement of a Pennsylvania judgment for support arrearages.

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No. 83-1803

In The

Supreme Court of the United States

October Term, 1983

CALIFORNIA,

Petitioner,

vs.

DAVID G. COHEN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

DAVID G. COHEN, the Respondent herein, prays that Petitioner's Writ of Certiorari to review the judgment of the California Court of Appeal, Fourth Appellate District, Division One, entered in the above-entitled case on December 2, 1983, be denied.

OPINION BELOW

The opinion of the California Court of Appeal, Fourth Appellate District, Division One, (hereinafter, "Opinion") is reported at *Morris v. Cohen* (1983) 149 Cal.App.3d 507; 196 Cal.Rptr. 834, and is printed in Petitioner's Brief, Appendix "A" attached thereto at p. A-1. The judgment of the California Supreme Court, denying a Petition for Hearing without opinion is printed in Petitioner's Brief, Appendix "B", attached thereto, at p. A-27.

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STATEMENT OF THE CASE

As summarized by the California Court of Appeal, Fourth Appellate District, Division One, the pertinent facts are as follows:

> David G. Cohen (David) and Doris Cohen Morris (Doris) were Pennsylvania residents, married there in 1950. Two children were born. The parties separated in 1959, and on October 2nd of that year, David was arrested in Pennsylvania and ordered to pay $50 per week for support of Doris and the children. David then posted a $1,000 bond with the Court to ensure his compliance with the support order and moved to California, where he has since resided. He made seven partial payments on the support order. On September 30, 1959, Doris filed for divorce, which was finalized on December 7, 1960. No spousal or child support order was entered at that time. On November 4, 1961, Doris married Edwin Morris, who adopted the two children on November 29, 1962.
>
> Fourteen years passed. Then, in 1976, Doris petitioned the Pennsylvania court to reduce arrearages

> due on the October 2, 1959, support order to a final judgment. David did not appear at the Pennsylvania hearing. The Court entered judgment for $8,000 in Doris' favor. David did not appeal or move to vacate the judgment. Represented by the San Diego County District Attorney, Family Support Division, Doris had the Pennsylvania judgment transferred to California and entered as a money judgment under Code of Civil Procedure Section 1710.10 on September 30, 1976.
>
> David moved to vacate the California judgment under Section 1710.40. His attempt to raise a number of defenses to enforcement of the judgment was rebuffed by the trial court, finding the 1976 Pennsylvania judgment was entitled to full faith and credit under the United States Constitution and David's defenses to enforcement of the judgment should have been raised and litigated before the Pennsylvania court. The trial court then contradicted itself and addressed one of David's defenses, finding Doris' right to spousal support under the 1959 order terminated upon her divorce from David. The court reduced the award to $6,825.00 based on an arbitrary apportionment of the $50.00 per week as $25.00 per week for Doris and $25.00 per week for the children. David's motion for a new trial was denied, as was Doris' motion for reconsideration of the reduction of the judgment amount.

(Opinion, Petitioner's Brief, pp. A-2 - A-5.)

The California Court of Appeal reversed the judgment of the Superior Court finding that: (1) Federal law does not require and California law does not authorize the District Attorney to represent Doris in this litigation (*Id.* at p. A-12); and therefore the County of San Diego District Attorney lacked standing to enforce the 1976 Pennsylvania judgment (*Id.* at p. A-25); (2) that Doris' action falls under the revised Uniform Reciprocal Enforcement of Support Act of 1968 (RURESA) rather than under the general act for enforcement of sister state judgments, the

1974 Sister State Money-Judgment Act (SSMJA) (*Id.* at p. A-13); (3) that California law permits the judgment debtor to raise all defenses to enforcement of a support order under RURESA that he or she would be entitled to raise to enforcement of a support order issued by a court of this state (*Id.* at pp. A-18 - A-19); and (4) that David's defense of the California Statute of Limitations was applicable here and should have been considered by the trial court (*Id.* at pp. A-19 - A-21). The California Supreme Court denied Doris' petition for a hearing.

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ARGUMENT

A review on writ of certiorari is not a matter of right, but of judicial discretion, and should be granted only where there are special and important reasons therefor. (S.Ct. Rule 17.1.) A right and fair result was reached by the decision below. Petitioner admits that no cases contradict this opinion. (Petitioner's Brief, p. 9.) Respondent will demonstrate that there is no basis for further review by this court.

1. Petitioner argues that the Opinion controverts the intent of Congress in adding Part D to Subchapter IV of the Social Security Act, designed to deter fathers from abandoning their families to welfare. (*Id.* at pp. 16-17.) Petitioner fails to distinguish the facts of this case from the intent of Congress and the obligation of the participating state. As the Court below reasoned,

> in electing to participate in the AFDC Program, California did not, pursuant to Title IV-D, assume the

> obligation of collecting child support arrearages due parents and their adult children, who are not "dependent children" under Title IV. What it did assume, rather, was the obligation to provide child support collection services to families of *minor* children in present need of the arrearages for the children's maintenance, whether or not the families are receiving public assistance.

(*Id.* at p. A-8.)

State-provided collection of support obligations is clearly intended to deter parents from deserting their *dependent* children and forcing the needy family into welfare. As the Appellate Court concluded,

> what is involved here is not the enforcement of a parent's obligation to support minor children in immediate need of child support payments but the collection of a 14-year old debt owed an ex-wife for the support of now adult children. Federal law does not require, and California law does not authorize the District Attorney to represent Doris in this action. In seeking to enforce the 1976 Pennsylvania judgment on behalf of Doris and her two adult children, the District Attorney's office quite inappropriately acted as a collection agency, at the taxpayer's expense.

(*Id.* at p. A-12.)

2. Petitioner has omitted essential facts which change the nature of the legal issues. Petitioner's statement of the case omits the fact that Doris remarried and the children were adopted within a short period after the original 1959 support order, thereby ending the support period in question as of November 29, 1962. No issue of welfare is involved here. If Doris had attempted to enforce the support order fourteen years later directly pursuant to RURESA, California's ten-year Statute of Limitations

(Code of Civil Procedure Section 337.5(3)) would have barred its enforcement. Doris instead obtained a Pennsylvania judgment and entered it in California as a money judgment to SSMJA; nevertheless, the San Diego County District Attorney proceeded to collect the support arrearages. This fact situation is complex and makes the case a poor vehicle for review of the issues raised by Petitioner. There are no facts in this case to support Petitioner's theory that prosecution by the state agency in this situation would have the effect of deterring fathers from deserting their families. Instead, the case presents an attempt to collect a money debt at the expense of state taxpayers.

3. Petitioner contends that obligors will receive a windfall under the decision below by evading their child support obligations until the children have become emancipated. First, the decision concerns state collection begun after the children are adult, not prosecution initiated on behalf of minor children. Second, this argument is based on the assumption that a support decree becomes unenforceable when state agencies cease to collect the arrearages owed. This assumption is speculative and unsupported in any manner by Petitioner. Adults may continue to pursue collection of the support arrearages by private means. The deterrence value of collecting arrearages continues, to the extent it exists, if parents of adult children wish to exercise their rights without state assistance.

4. Petitioner attempts to create an issue of discrimination between welfare recipients and those who do not receive welfare. (*Id.* at pp. 23-29.) Yet, the Opinion below raises no issue based on the grant of welfare assistance. Petitioner relies on the case of *Greene v. Iowa District Court for Polk County* (1981) 312 N.W.2d 915 al-

though Petitioner distinguishes this case from the present case where no welfare aid was applied for and there was no assignment of the right to receive the support to a state agency. (*Id.* at p. 27.) Petitioner then errs in comparing the inapposite results of *Greene* and the Opinion. In *Greene,* and likewise in *In re Marriage of Shore* (1977) 71 Cal.App.3d 290, the issue was whether the agency could collect the support payments *assigned to it;* in this case, however, the issue is whether the state agency can act as a collection agency *on behalf of others,* given the circumstances. A state agency should be able to pursue its own right to payment; thus, different policies are involved.

5. Petitioner also contends that the Pennsylvania judgment deserves full faith and credit in California and its enforcement cannot be barred by any California statute of limitation. Petitioner fails to discuss in any detail the Appellate Court's analysis or such authority as California Code of Civil Procedure Section 1699(a), permitting a judgment debtor to raise all defenses to enforcement of a support order under RURESA that he or she would be entitled to raise to enforcement of a support order issued by a court of California. (See *Id.* at pp. A-18 - A-25.) A blanket condemnation of California statutory and judicial authority without analysis or specific argument does not raise a substantial question deserving the review of this Court. In finding that Doris' claim was made pursuant to RURESA and was precluded by the California statute of limitations (*Id.* at p. A-25), the Court below reached a right and fair result.

CONCLUSION

Petitioner fails to state special and important reasons for a review on writ of certiorari, and no substantial question is raised by the decision below.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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